
UTAH LABOR COMMISSION

MARIA ENRIQUETA PALACIN,

Petitioner,

vs.

WAL-MART,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8070166

Maria Enriqueta Palacin asks the Utah Labor Commission to review Administrative Law Judge Hann's decision granting Wal-Mart's motion for summary judgment and dismissing Ms. Palacin's claim that Wal-Mart discriminated against her in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-5-107(11) of the Utah Antidiscrimination Act.

BACKGROUND AND ISSUE PRESENTED

Ms. Palacin claims that Wal-Mart terminated her employment because of her national origin. Wal-Mart filed a motion for summary dismissal of Ms. Palacin's claim. In ruling on Wal-Mart's motion, Judge Hann found that Ms. Palacin had presented no evidence to support her assertion that Wal-Mart had discharged her because of her national origin. Because there was no genuine issue of material fact on this essential element of Ms. Palacin's claim, Judge Hann granted Wal-Mart's motion and summarily dismissed Ms. Palacin's claim.

Ms. Palacin now asks the Commission to review Judge Hann's decision. Ms. Palacin asserts that some of the documents Wal-Mart has submitted in this matter are inaccurate. She also asserts that the assistant manager who terminated her did so because of a discriminatory motive.

FINDINGS OF FACT

Having considered the evidence within the record, the Commission agrees with Judge Hann's assessment that there is no genuine issue of material fact in dispute with respect to the following information.

Ms. Palacin began working for Wal-Mart as a cashier on July 21, 2004. On September 30, 2005, Wal-Mart reprimanded her for eight cash shortage or overage errors she had made between June and September of 2005. Wal-Mart warned Ms. Palacin that further errors could result in additional discipline, including termination. Ms. Palacin was later transferred to the position of in-stock associate where she stocked shelves, unloaded merchandise, assisted customers and provided

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help throughout the store as needed.

On January 14, 2006, Ms. Palacin received another reprimand for not completing a restocking assignment. Wal-Mart again warned Ms. Palacin that the next disciplinary action against her could be termination. On December 6, 2006, Ms. Palacin was assigned to help unload a truck, but refused the assignment over concern for her back. Wal-Mart's assistant manager then terminated Ms. Palacin based on the December 6 incident and her previous reprimands. No evidence has been presented to suggest that Ms. Palacin's national origin motivated or contributed to her discharge.

DISCUSSION AND CONCLUSION OF LAW

The Utah Antidiscrimination Act prohibits discriminatory employment practices based on several protected classifications, including national origin. Pursuant to § 34A-5-107 of the Act, the parties to an employment discrimination complaint are generally entitled to a full evidentiary hearing. However, § 63G-4-102 (4) (b) of the Utah Administrative Procedures Act permits summary judgment on such a complaint under the standards set forth in Rule 56 of the Utah Rules of Procedure—that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” With respect to Ms. Palacin's complaint, Wal-Mart requested summary judgment based on Ms. Palacin's failure to establish a *prima facie* case of discrimination.

To establish a *prima facie* case of national origin discrimination, Ms. Palacin must show: 1) membership in a protected class; 2) qualification for the position she held; and 3) adverse action against her because of her national origin. *See Sheikh v. Department of Public Safety*, 904 P.2d 1103, 1106 (Utah App. 1995). There is no dispute that Ms. Palacin is a member of a protected class or that she was qualified for the position she held with Wal-Mart. The only dispute is whether Wal-Mart terminated Ms. Palacin because of her national origin.

As a preliminary matter, the Commission notes that Ms. Palacin did not offer any evidence of a discriminatory motive prior to Judge Hann's dismissal of her complaint. Ms. Palacin argued that the assistant manager who terminated her was considered a “racist” by many employees, but did not offer any evidence to support that characterization.

In her motion for review, Ms. Palacin contends that the dates of certain reprimands are not accurate, but she admits that Wal-Mart gave her multiple reprimands and warned her further discipline could result in her termination. Ms. Palacin reiterates her position that Wal-Mart's assistant manager terminated her because of a discriminatory motive, but has not produced any evidence to support her position such as discriminatory statements or disparate treatment related to her national origin.

The evidence shows that Wal-Mart decided to terminate Ms. Palacin when she refused to assist in unloading a truck. There is no indication that Ms. Palacin's termination was based on her

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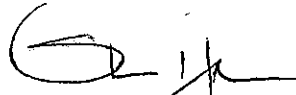
national origin rather than her refusal to perform this assignment in light of the reprimands she had previously received because of her job performance. Because Ms. Palacin has not offered any evidence to show that she was terminated because of her national origin, she has not established a prima facie case of discrimination.

For the foregoing reasons, the Commission agrees with Judge Hann that Wal-Mart is entitled to summary judgment because there is no genuine issue of material fact to show that Ms. Palacin was terminated because of her national origin. The Commission concurs with Judge Hann's determination that Ms. Palacin's complaint should be dismissed.

ORDER

The Commission affirms Judge Hann's decision of October 7, 2009, on this matter. It is so ordered.

Dated this 28th day of January, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.